

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENTS UNIT

In the Matter of D-482  
Florence/Shelburne Township

**FINDINGS OF FACT,  
CONCLUSIONS  
AND ORDER**

The above entitled matter came on for hearing before Administrative Law Judge Barbara J. Runchey on December 28, 2011 at the law office of Runchey, Louwagie & Wellman in Marshall, Minnesota.

The Petitioners, Neil Schultz and Gayle Schultz as Trustees of the Neil Schultz Trust Agreement dated October 29, 2009, and as trustees of the Gayle Schultz Trust Agreement dated October 29, 2009, appeared with counsel, Paul Stoneberg. Glen Petersen appeared on behalf of the City of Florence. Shelburne Township was not represented by counsel and made no appearance.

The hearing record closed on January 30, 2012, upon receipt of the last submission from the parties.

During the hearing, the following exhibits were stipulated to and received into evidence: Exhibits A-1 to A-10, B to M, and Exhibits 1-2.

**FINDINGS OF FACT**

The issue in this proceeding is whether the Petition for Detachment filed by Neil Schultz and Gayle Schultz, Trustees of the Neil Schultz Trust Agreement dated October 29, 2009, and Trustees of the Gayle Schultz Trust dated October 29, 2009, should be granted based on Minn. Stat. § 414.06.

The Administrative Law Judge finds that the Petition should be granted.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**PROCEDURAL FINDINGS**

1. At the outset of the hearing all parties stipulated to the admission of Hearing Exhibits A-1 to A-10, B to M, and 1-2.

2. The parties stipulated that:

- a. The requisite number of property owners signed the petition for detachment, that is Neil and Gayle Schultz as Trustees of the Neil Schultz Trust and Gayle Schultz Trust;
- b. The detachment property is rural in character and not developed for urban residential, commercial or industrial purposes;
- c. The detachment property is within the boundaries of the municipality and abuts a boundary;
- d. The detachment would not unreasonably affect the symmetry of the detaching municipality; and
- e. The detachment property is not needed for reasonably anticipated future development.

3. The parties agreed that the sole issue for determination by the Administrative Law Judge is whether the detachment should be denied on the basis that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.

4. On June 29, 2011, Petitioners filed a Petition for Detachment of property from the City of Florence, Minnesota (City). The Petition was signed by Neil and Gayle Schultz as Trustees of Neil Schultz Trust Agreement dated October 29, 2009, and of the Gayle Schultz Trust Agreement dated October 29, 2009. The Petitioners sought to detach approximately 24 acres from the City pursuant to Minn. Stat. § 414.06. The property proposed for detachment is described as follows:

All that part of the South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ ) of Section Twenty (20), Township One Hundred Nine (109), Range Forty-three (43), lying east and south of the railroad right of way,

AND

All that part of the North Half of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ ) of said Section Twenty (20), bounded as follows: Beginning at a point on the quarter line of said section distant 80 rods north of the center of said section, running thence north on said quarter line a distance of 14 rods; running thence west at right angles to last mentioned line to a point in the southeast line of the right-of-way of the Great Northern Railway Company; beginning again at the point of beginning and running thence west and parallel to the second mentioned line and on the 80 rod line to a point in the southeast line of the right of way of the Great Northern Railway Company; running thence in a northeasterly direction along the

southeasterly line of the right of way of the great northern railway company to point where said second line above mentioned ends.

EXCEPTING THEREFROM the following described property:

All that part of the three following described tracts:

1. That part of the southeast quarter of the northwest quarter (SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ) of section 20, township 109 north, range 43 west, lying east of the right of way of the Great Northern Railway Company;
2. That part of the northeast quarter of the northwest quarter (NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ) of section 20, township 109 north, range 43 west, lying easterly of Trunk Highway No. 23 as now located and established and southerly of the following described line: From a point on the quarter line of said section 20, distant 80 rods north of the center line of said section, run north on said quarter line a distance of 14 rods to the point of beginning; thence run west at right angles to the last mentioned line to a point on the southeast line of the right of way of the Great Northern Railway Company and there terminating;
3. The south 900 feet of the northwest quarter of the northeast quarter (NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ) of section 20, township 109 north, range 43 west, excepting therefrom that part described as follows: Commencing at the southeast corner of Outlot 3 of the Village of Florence; thence run east 112 feet; thence north 389 feet 9 inches; thence west 112 feet to the east line of said outlot; thence south along said line to the southeast corner of said outlot;

which lies northwesterly of a line run parallel with and distant 100 feet southeasterly of Line A described as follows:

Line A. Beginning at a point on the west line of said section 20 distant 1115.2 feet north of the southwest corner thereof; thence run northeasterly at an angle of  $44^{\circ}23'$  with said west section line for 1786.27 feet; thence deflect to the left a  $1^{\circ}15'$  curve (delta angle  $23^{\circ}16'$ ) for 1861.33 feet; thence on tangent to said curve for 260.68 feet; thence deflect to the right on a  $1^{\circ}00'$  curve (delta angle  $8^{\circ}00'$ ) for 800 feet and there terminating;

containing 3.25 acres, more or less, in to the existing highway; in addition to the existing highway.

5. On August 18, 2011, the MBAU convened a preliminary hearing on the petition, and the matter was continued indefinitely to allow the parties time to resolve the

contested issues through discussions. Notice of the hearing was published in the *Tyler Tribute* on August 3, 2011 and August 10, 2011.

6. Notice of the evidentiary hearing was effected on December 14, 2011 and on December 21, 2011 by publication in the *Tyler Tribute*.<sup>1</sup>

7. The detachment property consists of approximately 24 acres of bare land abutting the City boundary and Highway 23. It has no buildings or roads on it. Presently no one lives on the land. The acreage has been used exclusively for agricultural purposes from 1966 until the present.<sup>2</sup> Petitioners purchased real estate, including the detachment property, pursuant to a Contract for Deed March 14, 1966.<sup>3</sup> On October 29, 2009, the detachment property, along with other parcels owned by Neil and Gayle Schultz, were deeded to Neil Schultz Trust and Gayle Schultz Trust.<sup>4</sup>

8. Petitioners initially sought tax relief by contacting the Florence City Treasurer, Shirley Pagel on September 10, 2010.<sup>5</sup> Pursuant to her instructions, Petitioners thereafter attended a City Council meeting and a Truth in Taxation meeting in an unsuccessful attempt to address their objections to the City of Florence proposed tax increases.<sup>6</sup>

9. The City does not provide sanitary sewer or water to the detachment property. In addition, the detachment property receives no other City services, including but not limited to, utilities, water, road repair, road grading, ditch mowing, bridge maintenance or general maintenance.<sup>7</sup>

10. Petitioners have never been contacted by the City for industrial or commercial development.<sup>8</sup>

11. Petitioners also own additional real estate adjoining the detachment property which is also agricultural and which is similarly rented to a non-relative, Mike Wooge, on a three year contract.<sup>9</sup>

12. Petitioners testified that the detachment property is “good farm ground” and that agricultural real estate values have increased significantly in recent years.<sup>10</sup>

13. According to the Lyon County Assessor, there are four general reasons for tax increases in this part of Lyon County: an increase in the Russell/Tyler/Ruthton

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<sup>1</sup> Aff. of Publication.

<sup>2</sup> Testimony of Neil Schultz.

<sup>3</sup> *Id.*

<sup>4</sup> Hearing Ex. D.

<sup>5</sup> Hearing Ex. M, Test. of N. Schultz.

<sup>6</sup> Test. of N. Schultz and Shirley Pagel.

<sup>7</sup> Test. of N. Schultz and S. Pagel.

<sup>8</sup> Test. of N. Schultz.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

School District levy; a legislative change in the homestead tax credit; an increase in agricultural real estate value; and no increase/stagnation in residential home value. Agricultural real estate value increased significantly over the past few years. According to the Lyon County Assessor, the increase in Petitioner's property taxes is significantly attributable to changes by the legislature relating to the homestead credit because residential real estate values in the City decreased or remained unchanged which resulted in a reduction of residential taxable value and a corresponding reduction in taxes and a consequent increase in agricultural real estate values and taxes. The net result is that the tax burden shifted from the residential classification to agricultural classification.<sup>11</sup>

14. While there are a number of cities in Lyon County which have a higher tax rate than the City, it is on the "upper end" compared with other cities.<sup>12</sup> Many other cities have agricultural property within their city limits but use a Rural Service District classification to reduce the tax impact on agricultural land. While City taxes have decreased for many residential homeowners within the City, Petitioner's taxes have increased from \$414.87 in 2007 to \$1,518.67 in 2012<sup>13</sup>.

15. The City of Florence Clerk/Treasurer testified that there are approximately 58 tax parcels and 14 households in the City.<sup>14</sup> The population of Florence consists of "above middle-age" residents, most who are still working.<sup>15</sup> The population has decreased from approximately 75-100 in 1970 to a current population of 39.<sup>16</sup> The City has one part-time City Clerk and owns a tractor for snow removal. There have been no new residences/buildings for 20 years. City services include providing water and electricity which are obtained from Lincoln-Pipestone Rural Water System and Xcel Energy. Each household has a "mound septic system," the cost of which was contributed to by the City. The City contracts with the City of Tyler for garbage and fire protection services. Even ignoring detachment of the subject area, the current budget is inadequate to properly meet anticipated costs associated with a federal warning system and new city street signage.<sup>17</sup>

16. The source of revenue for the City is primarily local taxes and Local Government Aid (LGA). Due to recent legislative developments, it is anticipated that LGA aid will be reduced and it is unknown how much LGA aid will be available in the future.<sup>18</sup> There is some revenue generated from water and electricity fees as well, but the greatest portion of revenue is from local taxes and LGA. In addition to Petitioner's parcel, there is another parcel of agricultural real estate that has the same

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<sup>11</sup> Test. of D. Champine.

<sup>12</sup> *Id.*

<sup>13</sup> Test. of N. Schultz and Hearing Ex. L.

<sup>14</sup> Test. of S. Pagel.

<sup>15</sup> Test. of Bruce Johnson.

<sup>16</sup> *Id.*

<sup>17</sup> Test. of S. Pagel, B. Johnson, Exs. I-1 and I-2.

<sup>18</sup> Test. of S. Pagel.

characteristics and it is unknown what precedent, if any, detachment of this property will have on that parcel.<sup>19</sup>

17. The City would lose approximately 5 percent in tax revenue if the subject area detaches. The loss of revenue would not be offset by service cost savings since the subject area is currently not receiving any City services.<sup>20</sup>

18. If the detachment is allowed, there is no question that it will financially impact the tax revenue for the City. Nonetheless, the evidence presented was insufficient to demonstrate that the City would be unable to carry on the functions of government without undue hardship. No evidence was produced that it would affect the City's ability to function as taxes could be spread or shifted to the remaining taxpayers in the form of higher taxes.

19. There was no evidence that detachment of the subject property from the City would cause changes in the service levels provided to the remainder of the City community.

### **HEARING COSTS**

20. The parties did not agree to a division of the costs of this proceeding.

21. It is appropriate to allocate the costs of the proceeding to the parties on an equitable basis.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §§ 414.06 and 414.12 and by assignment from the Chief Administrative Law Judge of the Office of Administrative Hearings.

2. Proper notice for the hearing in this matter has been given and it is properly before this ALJ.

3. Petitioners have the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.

4. Minn. Stat. § 414.06, subd. 3 provides in part;

Subd. 3. Order. Upon completion of the hearing, the chief administrative law judge may order the detachment if it finds that

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<sup>19</sup> Test. of B. Johnson.

<sup>20</sup> Test. of B. Johnson.

the requisite number of property owners have signed the petition if initiated by the property owners, that the property is rural in character and not developed for urban residential, commercial or industrial purposes, that the property is within the boundaries of the municipality and abuts a boundary, that the detachment would not unreasonably affect the symmetry of the detaching municipality, and that the land is not needed for reasonably anticipated future development. The chief administrative law judge may deny the detachment on finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.

5. This proceeding was properly initiated by a Petition for Detachment signed by the property owners of the subject area, and therefore, satisfied Minn. Stat. § 414.06, subd. 1, and the first criterion of subd. 3.

6. Because the subject area is rural in character, and it has not been developed for urban residential, commercial or industrial purposes, these criteria set forth in Minn. Stat. § 414.06, subd. 3 are met.

7. Because the subject area is within the boundaries of the City and abuts a boundary of the City, the next two criteria set forth in Minn. Stat. § 414.06 are met.

8. The detachment of the subject area would not unreasonably affect the symmetry of the City of Florence and therefore, this criterion as set forth in Minn. Stat. § 414.06, subd. 3 is met.

9. The subject area is not needed for reasonably anticipated future development and therefore, this next criterion set forth in Minn. Stat. § 414.06, subd. 3 is met.

10. The detachment of the subject area would not affect the City's ability to carry on the functions of government and the City would not suffer undue hardship, and therefore, the Petition for Detachment satisfies the final criteria set forth in Minn. Stat. § 414.06, subd. 3.

11. Minn. Stat. § 414.12, subd. 3, specifies that, if the parties do not agree to a division of the costs before the hearing, the costs "must be allocated on an equitable basis by the . . . chief administrative law judge."

12. After consultation with and approval by the chief administrative law judge, it is appropriate to allocate the costs of this proceeding as follows: to the City 50%, to the Petitioners 50%.

13. Any Conclusion more properly denominated a Finding is adopted as such.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **ORDER**

IT IS HEREBY ORDERED that:

1. The Petition for the Detachment of the Subject Area from the City of Florence is **GRANTED**.
2. The Chief Administrative Law Judge shall cause copies of this Order to be mailed to all persons described in Minn. Stat. § 414.09, subd 2.
3. The costs pertaining to this matter shall be divided equally between the parties.

Dated: February 6, 2012

s/Barbara J. Runchey  
Barbara J. Runchey  
Administrative Law Judge

Reported: Digitally recorded.

### **NOTICE**

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.06, 414.09, and 414.12. Any person aggrieved by this Order may appeal to Lyon County District Court by filing an Application for Review with the Court of Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.<sup>21</sup>

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within 7 days from the date of the mailing of the Order.<sup>22</sup> A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

### **MEMORANDUM**

The detachment property is currently located within the City. The character of the detachment property is rural and the property is used solely for agricultural purposes. There are no plans to develop the property. No part of the real estate has been platted or subdivided.

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<sup>21</sup> Minn. Stat. § 414.07, subd. 2.

<sup>22</sup> Minn. R. 6000.3100.



The parties stipulated that all statutory requirements to allow detachment exist and the sole issue for determination is whether the detachment should be denied on the basis that “the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.”<sup>23</sup>

Mayor Bruce Johnson testified that the detachment would create a hardship because the City would lose tax revenue which would then need to be apportioned to the remaining residents with a resulting increase of taxes for the remaining taxpayers. There was no testimony what the anticipated amount of lost tax receipts or the percentage the loss of the detachment property taxes would have on the overall City budget. There was no showing that the City would be unable to meet its budget obligations after detachment of the property. In short, there was no showing of an adverse economic impact resulting from the detachment. The mere fact that a tax burden would be shifted to remaining taxpayers does not, in and of itself, constitute “undue hardship” and is not a sufficient basis to deny detachment.

It appears that the petitioners are being taxed for municipal services for which they receive no corresponding benefit. The higher tax rates for agricultural real estate located within the City appear to have no relationship to the benefits the City provides, rather is a result of increased land values.

The City also argues that the precedent of granting the detachment would constitute a hardship on the City as other agricultural property owners will be encouraged to seek to detach from the city. It is concluded that the City’s speculative fear that other residents may petition for detachment under the statute and the resulting impact would affect their tax receipts is not a valid basis for denial. While the Legislature has supported land use planning in municipalities to protect the public interest in efficient local government,<sup>24</sup> it has also expressly stated its view that rural agricultural land is better suited to township ownership, rather than municipal government ownership.<sup>25</sup>

Therefore, the detachment does not render the remainder of the City unable to carry on the functions of government without undue hardship within the meaning of the statute.

## **Division of Costs**

The parties did not agree to a division of the hearing costs between themselves. Minn. Stat. § 414.12, subd. 3, specifies that, if the parties do not agree to a division of costs before the hearing, the costs “must be allocated on an equitable basis by the ... administrative law judge.” It is concluded that the City shall bear 50% of the cost of the proceedings attributable to the Petition and 50% shall be borne by Petitioners.

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<sup>23</sup> Minn. Stat. § 414.06, subd. 3.

<sup>24</sup> Minn. Stat. § 414.01, subd. 1b(3).

<sup>25</sup> Minn. Stat. § 414.01, subd. 1a(2).

The City cooperated with the Petitioners by entering into a Stipulation regarding undisputed statutory factors and by identifying and presenting joint exhibits. This conduct has been recognized in the cost allocation.

**B.J.R.**